

# **Informal Dispute Resolution Guidelines for Assisted Living Facilities**

## **1. Introduction**

- 1.1. The Idaho Department of Health and Welfare, Bureau of Facility Standards (Department), and the Program Restructuring Project Work Group, comprised of representatives of the Idaho Assisted Living Association, Idaho Health Care Association, advocacy groups, and independent assisted living providers, have established the following independent review process for the purpose of resolving disputes with assisted living facilities (ALF) over state deficiencies cited during a survey. The survey process brings together a number of professional interests. The Department, through the survey team, is responsible for meeting a large array of survey requirements in a thorough, professional manner. ALFs are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest of all parties is the resident's right to the right health outcomes (i.e., to attain and maintain the highest physical, mental, and social functioning based on client need, client choice, and client resources) including the prompt correction of deficiencies that interfere with this right.
- 1.2. This independent review process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

## **2. Objectives**

- 2.1. The principal objectives of this independent review process are to:
  - 2.1.1. Facilitate resolution of differences throughout the survey process through constructive, clear, and ongoing communication;
  - 2.1.2. Provide a vehicle to informally and quickly resolve disputes related to survey deficiencies; and
  - 2.1.3. Promote the mutual exchange of clarifying information, which enhances the understanding of survey decisions and minimizes conflicts and disagreements.
- 2.2. The review process depends upon open discussion of concerns and significant issues while surveyors are on-site. It also provides a means to informally pursue resolution of deficiency citation disagreements at higher levels of the survey organization, if requested.

## **3. Guiding Principles**

- 3.1. This process does not alter or delay the required timetables associated with licensure, termination, or other enforcement actions. However, any enforcement action imposed based solely on an overturned deficiency shall be rescinded.

- 3.2. This informal process does not limit any other appeal available under state laws or regulations.
- 3.3. Allegations of surveyor misconduct should not be reported under this process, but rather to the Supervisor of the Residential or Community Care Program or Bureau Chief for separate resolution.
- 3.4. Facilities may not use the informal process to delay the formal imposition of enforcement proceedings or to challenge any other aspect of the survey including:
  - 3.4.1. Enforcement actions imposed by the Department;
  - 3.4.2. Failure of the survey team to comply with a requirement of the survey process;
  - 3.4.3. Inconsistency of the survey team in citing deficiencies among facilities; or
  - 3.4.4. Inadequacy or inaccuracy of the informal dispute resolution process.
4. **General Process** -- It is critical that any deficiency disputes be resolved at the earliest possible date. The Department must adhere to specific short time frames in developing and writing the survey report and processing the facility's Plan of Correction (POC). Once the survey report has been issued in final form and formal distribution made, it becomes much more difficult to resolve a conflict regarding any deficiency.
5. **Entrance Conference** -- The process begins at the entrance conference when the team leader explains the survey process and the nature of the information to be gathered during the survey.

## **6. On-site Survey**

- 6.1. Surveyors will use all information made available to them in making their decisions about facility compliance. Information to support survey decisions regarding noncompliance must be fully and properly documented. Facility and survey staff must communicate regularly to ensure that surveyors have access to all relevant information throughout the process. Survey staff is expected to seek information from responsible facility representatives and give the facility a reasonable opportunity to provide additional information on a timely basis, normally no later than the day of the scheduled exit conference.
- 6.2. Members of the survey team are expected to hold at least one (1) briefing session or status meeting, not including the exit conference, with key facility staff during the course of the survey, to include discussion of potential noncompliance in both core issues and non-core issues. These meetings should include team observations, including potentially significant issues that may be known at the time and responses to facility questions and provide the opportunity for the facility to supply additional information.

- 6.3. If issues arise during the survey that individual surveyors and facility staff cannot resolve, the team leader and the facility's administrator should meet and attempt to overcome any misunderstanding or miscommunication. This meeting may include other surveyors and facility staff as necessary.

## **7. Exit Conference**

- 7.1. The survey team will communicate its preliminary deficiency citations and the general basis for the deficiency citations to the facility staff at the exit conference. Due to time constraints, all examples that support a specific deficiency citation may not be given. However, all concerns that have the possibility to lead to a deficiency citation will be identified to the facility, allowing the facility the opportunity to provide additional information. Deficiency citations will not be issued without the survey team adhering to this requirement. Opportunity will be given to the facility staff to provide further information on any deficiencies not discussed prior to the exit conference, if they are disputed. The team will give appropriate consideration to any additional timely information in determining the facility's compliance with requirements. Such information must be submitted (faxed or sent by overnight mail) no later than two (2) working days following the exit conference in order to be considered in preparing the survey report.
- 7.2. While the facility administrator may determine who is appropriate to attend the exit conference, because of the informal nature of the exit conference and the preliminary nature of the deficiencies discussed, facility attorneys are not expected to be present at the conference. The exit conference is not intended to be a preliminary hearing on the merits of deficiency citations. Any independent consultants engaged by the facility for assistance may attend the exit conference as observers.
- 7.3. The Department audiotapes the exit conference. A tape is left with the facility at the end of the exit. The primary reason(s) are to allow the facility to begin the Plan of Correction before receiving the final report and for internal training purposes.
- 7.4. The Department, in accordance with Department protocol, may cancel or end the exit conference if the facility creates an environment that is hostile or inconsistent with the informal and preliminary nature of the exit conference. In such cases, a subsequent exit conference may be conducted at the discretion of the Department.

## **8. After the Exit Conference**

- 8.1. Additional information that the facility believes will demonstrate compliance with the preliminary deficiencies identified at the exit conference must be submitted to the survey team submitted (faxed or sent by overnight mail) no later than two (2) working days following the exit conference. This short time frame is based on the fact that the surveyors begin preparing the formal survey report on the Monday following the exit conference. The Supervisor will normally be involved in the review of such additional information on any disputed areas prior to finalizing the survey report.

- 8.2. The Department is required by Department policy to issue the survey reports within ten (10) working days of the survey completion date (exit conference date).

## **9. Level I Informal Dispute Resolution (IDR) After the Survey Report is Issued**

- 9.1. If the provider disagrees with the survey report findings, the provider may make a written request to the Chief of the Bureau of Facility Standards for a Level I IDR meeting. The request for the meeting must be made within ten (10) business days of receipt of the statement of deficiencies. The specific deficiencies for which the facility asks reconsideration must be included in the written request as well as the reason for the request for consideration. The facility's request will include sufficient information for the Department to determine the basis for the provider's appeal.
- 9.2. The meeting may take place in person or by conference call. It will be conducted by the Chief of the Bureau of Facility Standards or his/her designee. The facility is encouraged to present written evidence, e.g., documentation, records, etc., that the deficiency did not exist. The informal dispute resolution process is not to be used if the facility agrees that a deficiency existed but has been corrected and wants it erased from the record; agrees that a deficiency exists but disagrees with the requirement or remedy; or questions the validity of a rule or law.
- 9.3. The Department will send a written decision to the facility within thirty (30) days of the IDR process/meeting. If the decision changes any deficiency determinations, a new statement of deficiencies will be generated by the Department to reflect the changes. Proposed enforcement actions will also be amended to reflect the deficiency changes.

## **10. Level 2 IDR Meeting through the Department or Contractor Panel After Level I Decision**

- 10.1. If disputes have not been resolved after the Level I IDR opportunity has been provided, or if disagreement arises or continues after the facility receives the formal written notification of the IDR Level I decision, the facility may request a Level 2 IDR meeting either through the Department or the contractor panel on the involved deficiencies.

## **11. Level 2 IDR Meeting through the Department After Level I Decision**

- 11.1. The Administrator of the Division of Medicaid or his or her designee conducts the IDR Level 2 meeting. At the request of the provider, a representative of the Idaho Commission on Aging will attend as an advisor to the administrator.
- 11.2. Request for Level 2 IDR Meeting through the Department
  - 11.2.1. The facility shall request a Level 2 IDR meeting in writing, citing each disputed deficiency and sending the request to the Department Administrator or his designee at the address indicated on the Level I IDR notice of decision. The request and any evidence must be received by the Department within ten (10) business days of receipt of the survey report and written notification of the results

of the Level I IDR. No requests will be accepted after the tenth (10<sup>th</sup>) business day.

- 11.2.2 In its request, the facility should indicate whether the facility wants to present its position in person, by telephone, or solely in writing and whether the facility will be represented by legal counsel at the meeting. Such information is necessary to ensure that the necessary arrangements are in place for the meeting.
- 11.3. Any documentation submitted at the Level 2 IDR meeting must have been submitted at the Level I IDR meeting.
- 11.4. The date and time for the IDR will be set in consultation with the provider.
- 11.5. The Level 2 IDR Meeting
  - 11.5.1 The Level 2 IDR meeting consists of a representative of the Administrator, the Supervisor of Residential or Assisted Living, and representative(s) of the provider. The provider can also request that a representative of the Ombudsman's Office be present.
  - 11.5.2 Parties may participate in the Level 2 IDR meeting in person or by telephone. Any witnesses may also participate in person or by telephone. In addition, the parties to the meeting have the option of presenting their case entirely in writing without a meeting.
  - 11.5.3 The Level 2 IDR is intended to be informal. There is no set procedure that must be followed. At the meeting, the provider and representatives of the Department will discuss the deficiencies in dispute. At the provider's request, a representative of the Ombudsman will also be present.
  - 11.5.4 Parties have the option of being represented by legal counsel, but, because of the informal nature of the meeting and limited time for presentation, the use of attorneys is neither necessary nor encouraged. If the provider chooses to be represented by counsel at this Level 2 IDR Meeting, the Department must be notified in order for the Department to also be represented by an attorney.
  - 11.5.5 Although it is preferred that information submitted by the facility in support of its appeal be received with the facility's request for a Level 2 IDR meeting, the facility can submit additional information at the meeting provided this additional information was previously submitted at the Level I IDR.
- 11.6. Level 2 IDR Meeting Suggestions
  - 11.6.1 The provider should address survey findings one at a time, explaining why the provider disagrees with the finding and pointing out any documentation that supports the facility's position.
  - 11.6.2. Submission of large volumes of overly detailed, redundant, or irrelevant material will hamper the review process.

## 11.7. Level 2 IDR Decision

- 11.7.1. The representative of the Administrator reviews the information presented by the provider and, in consultation with the Supervisor of Residential or Assisted Living and the Ombudsman's representative (if participating), decides whether each survey finding on appeal is affirmed or modified.
- 11.7.2. The facility shall be notified of the review decision within thirty (30) days of the Level 2 IDR meeting.
- 11.7.3. If the Level 2 IDR review results in a decision to modify or delete a deficiency, the following steps will be taken:
  - 11.7.3.1. If the deficiency is to be deleted, the deficiency citation will be electronically deleted from the Bureau data system. Any enforcement actions(s) imposed solely because of that deficiency citation would be rescinded.
  - 11.7.3.2. If the deficiency is to be amended (but still cited), the deficiency will be electronically revised. Any enforcement action(s) imposed will be reviewed by the Department for continued applicability.
  - 11.7.3.3. The facility has the option to request a "clean" (new) copy of the survey report. However, the clean copy will be the releasable copy only when a "clean" (new) Plan of Correction (POC) is both provided and signed by the facility. The original survey report is disclosable when a clean POC is not submitted and signed by the facility. In either case, any statement of deficiencies and/or POC which is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman and other parties as required by law.

## 12. Level 2 IDR Meeting through the Contractor Panel After Level I Decision

- 12.1. The IDR is conducted by a three (3)-person panel (IDR Panel) consisting of professionals such as a registered nurse, dietician, social worker, or licensed residential care administrator. The Contractor may choose which professional entities need to sit on the panel. Each panel member shall have completed training developed and approved by the Executive Oversight Committee (EOC). The Contractor shall initially determine if any Panel member has a conflict of interest.
- 12.2. Panelists' Code of Ethics
  - 12.2.1. Because potential Panelists could be actively working in the assisted living industry, the Program Restructuring Committee has developed the following Code of Ethics:

- 12.2.1.1. The preservation of the highest standards of integrity and ethical principles is vital to the success of the Informal Dispute Resolution (IDR) process. This Code of Ethics was developed in effort to stress the fundamental rules considered essential to the success of the IDR process.
- 12.2.1.2. It shall be the obligation of IDR Panelists to seek to avoid not only conduct specifically proscribed, but also conduct that is inconsistent with the spirit and purpose of informal dispute resolution. Failure to specify any particular responsibility or practice in the Code of Ethics should not be construed as denial of the existence of other responsibilities or practices.
- 12.2.1.3. Recognizing that the ultimate responsibility for applying standards and ethics falls upon the individual, the Program Restructuring Committee has established this Code of Ethics to make clear its expectations of participants.
- 12.2.1.4. Individual panel members shall maintain high standards of professional competence. This includes possessing and maintaining the competencies necessary to effectively perform these responsibilities.
- 12.2.1.5. The IDR process shall provide a forum for the fair resolution of differences in professional opinion; individual panel members shall avoid partisanship.
- 12.2.1.6. Individual Panelists shall disclose any actual or potential circumstance concerning him or her that might reasonably be thought to create a conflict of interest or have a substantial adverse impact on the Panel or its decisions. Based on any conflict of interest, the Contractor may decide, in its sole discretion, to replace the individual panel member with a backup Panelist. The Panelist with the alleged conflict may not participate in the decision. Examples of circumstances that should be disclosed include, but are not limited to, the following:
  - 12.2.1.6.1. The Panelist is currently, or was within the past two (2) years, an employee of the facility requesting the IDR or its parent organization;
  - 12.2.1.6.2. The Panelist is currently, or was within the past six (6) months, under contract to provide service to the facility or its parent organization;
  - 12.2.1.6.3. The Panelist is a former employee of the facility who left under adverse circumstances;
  - 12.2.1.6.4. The Panelist has a family member in the facility;
  - 12.2.1.6.5. The Panelist has a financial interest in the facility or its parent organization. "Financial interest" shall not include

ownership of publicly traded stock purchased on the open market unless the individual owns five percent (5%) or more of the outstanding shares;

12.2.1.6.6. The Panelist was a member of the survey team for the survey in question; or

12.2.1.6.7. The Panelist, individually, has filed a lawsuit against the facility or the facility has filed a lawsuit against the individual Panelist.

12.3. Survey information shall be kept confidential. Individual panel members shall not discuss particulars of its deliberations in any forum outside the IDR process itself or the Department, including, but not limited to, the following:

12.3.1. The particular circumstances of any facility's survey in such a way as would identify the facility;

12.3.2. The name(s) of any resident(s) referred to in survey findings or identified through the IDR process; or

12.3.3. Any recommendations relating to enforcement imposed against a facility.

12.4. Panel members shall not discuss or in any way disclose the voting history of any Panel member. Discussions held during decision deliberation shall be held strictly confidential.

12.5. Individual Panel members shall inform the Contractor of actual or potential violations of this Code of Ethics, and fully cooperate with the Contractor's inquiries into matters of professional conduct related to this Code of Ethics.

12.6. Individual Panel members shall not defend, support, or ignore unethical conduct perpetrated by colleagues or peers.

12.7. Panel members shall display professionalism and respect for one another at all times.

12.8. Panel members shall act with integrity and shall avoid conflicts of interest in the performance of their professional and committee responsibilities.

12.9. Request for IDR

12.9.1. A facility shall request an IDR by sending in the completed attached request form for each disputed deficiency and returning the original form with five (5) copies to the Contractor. Five (5) copies of the evidence must also be sent at the time of the request for an IDR. The request and evidence must be received by the Contractor within ten (10) business days of receipt of the written notification of the results of the Level I IDR. No requests will be accepted after the tenth (10<sup>th</sup>) business day.



- 12.9.2. Any evidence submitted as an attachment to the request form(s) must have been submitted for the Level I IDR.
- 12.9.3. The facility should also attach to the request form copies of the pages from the Survey Report with the rule numbers and examples in dispute.
- 12.9.4. The facility should designate on the request form(s) whether the facility wants to present its position in person, by telephone, or solely in writing to the IDR Panel, and whether the facility will be represented by legal counsel at the meeting. Such designations are necessary to ensure that the necessary arrangements are in place for the meeting.
- 12.9.5. Submitted IDR requests will be scheduled by the Contractor, provided that:
  - 12.9.5.1. The request is received within ten (10) business days of the facility's receipt of the results of the Level I IDR and the resulting Survey Report; and
  - 12.9.5.2. The IDR request form plus evidence and five (5) copies of the form plus evidence are provided.

#### 12.10. IDR Coordination

- 12.10.1. Within three (3) working days of receipt of an IDR request, the Contractor will notify the Department to obtain information regarding the date of the facility's receipt of the Survey Report and notice of the decision following the Level I IDR.
- 12.10.2. Two weeks in advance of the next regularly scheduled hearing day, the Contractor will send a schedule to the facility and send/deliver the materials to the Department for the IDR scheduled to be heard.
- 12.10.3. If there are too many requests to be heard in one day, the Contractor will notify the facility and the Department about which requests will be moved to the next regularly scheduled meeting.

#### 12.11. The IDR Meeting

- 12.11.1. Parties, including witnesses, may participate in the IDR Meeting in person, by telephone, or in writing.
- 12.11.2. Parties have the option of being represented by legal counsel; however, because of the informal nature of the meeting and limited time for presentation, the use of attorneys is neither necessary nor encouraged. The state will be represented by legal counsel only if the facility chooses to be represented by an attorney.
- 12.11.3. At the meeting with the IDR Panel, the facility and the Department are given an opportunity to discuss the deficiencies in dispute. The facility will present its points, followed by the Department. The Panel will then have an opportunity to

discuss the issues with both parties. This panel discussion time is exclusive of the facility's and Department's presentation times.

- 12.11.4. In consideration of the Panelists' work load and the need to keep the process efficient and timely, the presentations by the appealing facility and Department are limited in time. The facility will have fifteen (15) minutes to summarize its position on the deficiencies in dispute. The Department will have eight (8) minutes to respond. A facility wanting additional time to present before the Panel must request the additional time as part of its request for an IDR. The Contractor shall decide whether additional time will be granted. If additional time is granted the Department will be given half that much in additional time to respond to the facility.

## 12.12. IDR Meeting Suggestions

- 12.12.1. Because time and space for oral presentation is limited:

- 12.12.1.1. The Panel will rely heavily on documentation. The Panel's consideration of the facility's documents will be enhanced if the documents are tabbed to correspond to the rule number to which they apply;
- 12.12.1.2. The oral presentation should focus on the specific reasons that the survey results are invalid and point the Panel to the submitted documentation that supports the facility's position;
- 12.12.1.3. Submission of large volumes of overly detailed, redundant, or irrelevant material will impede the review process; and
- 12.12.1.4. Keep the number of persons in the meeting room to the minimum necessary. Remember that people can participate by telephone, if requested in advance.
- 12.12.1.5. Either the facility or the Department may participate by telephone or in writing or in person at their own discretion.

## 12.13. IDR Decision

- 12.13.1. Three (3) Panel members constitute a quorum for purposes of making a decision. It is hoped that the Panel can make its decisions by consensus. If no consensus can be reached, a decision requires the affirmative vote of two (2) Panel members. If the panel is unable to reach a decision by an affirmative vote of two (2) panel members, the survey findings being appealed are deemed to be accepted.
- 12.13.2. The Department shall be notified of the Panel's decision within fourteen (14) working days of the IDR meeting. On the day of the IDR meeting, the Panel shall meet to determine, for each appeal heard, whether the deficiency cited is supported, amended, or deleted. The decision of the Panel will be noted on the request form(s), and then sent to the Department.

- 12.13.3. The Department will notify the facility of the decision of the contractor panel within fourteen (14) working days.
- 12.13.4. If the IDR review results in a decision to amend or delete a deficiency, the following steps will be taken:
  - 12.13.1. If the deficiency is to be deleted, the deficiency citation will be electronically deleted from the Department data system.
  - 12.13.2. If the deficiency is to be amended (but still cited), the deficiency will be electronically revised. Any enforcement action(s) imposed will be reviewed by the IDR Panel for continued applicability. The Panel has the right to recommend to the Department that enforcement actions be amended or deleted.
  - 12.13.3. The facility will be provided with a “clean” (new) copy of the survey report. However, the ALF will be required to submit a “clean” (new) Plan of Correction that is signed by the ALF.
- 12.14. Payment for IDR
  - 12.14.1. If the provider prevails, the Department is responsible for payment for the IDR.
  - 12.14.2. If the Department prevails, the provider is responsible for payment for the IDR.
- 12.15. Appeal from IDR Decision.
  - 12.15.1. Any survey finding that revokes, suspends, or modifies a facility’s license can be appealed to an administrative review. Information on how to file an appeal will be contained in the notice of the enforcement decision. Procedures governing this state appeal process are set out in IDAPA 16.05.03.
  - 12.15.2. If the disputes have not been resolved through the Level II IDR opportunity, or if disagreement arises or continues after the facility receives the formal written survey report, the facility may request an administrative hearing of the involved deficiencies.
  - 12.15.3. The Department will only request an administrative hearing if the findings of the contractor panel are not consistent with state law and rules.

### **13. Role of the Executive Oversight Committee**

- 13.1. The Program Restructuring Committee is to designate an Executive Oversight Committee (EOC) to consist of representatives of the assisted living industry, both association affiliated and non-affiliated, the Department, and the advocacy groups.

- 13.2. The EOC is responsible for reviewing the completed RFP (Request for Proposal) developed by the Department and the provision of feedback to the Department on the IDR process, including the Code of Ethics, and the method for training IDR Panel members and alternates.
- 13.3. The Executive Oversight Committee (EOC) shall meet approximately six (6) months after the new IDR process begins, and quarterly (or as needed), thereafter, to evaluate the process and provide feedback to the Department.

***PANELIST ACKNOWLEDGEMENT***

**The undersigned acknowledges that s/he has read the “Informal Dispute Resolution Guidelines for Residential or Assisted Living Facilities” including Section 12.2 “Panelists’ Code of Ethics,” and agrees to abide by the same.**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_